

EXHIBIT 31

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
et al.,

Plaintiffs,

vs.

GOOGLE, LLC,

Defendant.

Civil Action

No. 1:20-cv-3010

Washington, DC

September 14, 2023

1:36 p.m.

Day 3

Afternoon Session

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For DOJ Plaintiffs:

KENNETH DINTZER

U.S. Department of Justice
1100 L Street, NW
Washington, DC 20005

JOSHUA HAFENBRACK

ERIN MURDOCK-PARK

RICHARD GOWER

MEAGAN BELLISHAW

U.S. Department of Justice
450 Fifth Street, NW
Washington, DC 20001

For Plaintiff
State of Colorado:

JONATHAN SALLET

Colorado Department of Law
CPS/Antitrust Section
1300 Broadway, 7th Floor
Denver, CO 80203

WILLIAM CAVANAUGH, JR.

Patterson, Belknap, Webb & Tyler, LLP
1133 Avenue of the Americas #2200
Suite 2200
New York, NY 10036

1 Murdock-Park for the United States. We call Jim Kolotouros.
2 He is the Google vice president of android partnerships. Your
3 Honor, because Mr. Kolotouros will be speaking about
4 contractual terms, we expect that we will have to seal part of
5 his session today.

6 **THE COURT:** Okay.

7 **DEPUTY CLERK:** Do you solemnly swear or affirm that the
8 testimony you're about to give this Court will be the truth,
9 the whole truth, and nothing but the truth?

10 **THE WITNESS:** I do.

11 **DEPUTY CLERK:** Thank you.

12 **THE COURT:** Mr. Kolotouros, welcome.

13 **THE WITNESS:** Thank you.

14 **DIRECT EXAMINATION OF JAMES KOLOTOUROS**

15 **BY MS. MURDOCK-PARK:**

16 **Q.** Good afternoon, Mr. Kolotouros. I'm Erin
17 Murdock-Park, we met at one of your depositions.

18 **A.** Good afternoon.

19 **Q.** I'm going to hand up a witness binder, if I may
20 approach.

21 **A.** Thank you.

22 **THE COURT:** Counsel, just for your -- well, let me ask you
23 this: The closed session, approximately how far into your
24 examination do you expect to need to go into a closed session?

25 **MS. MURDOCK-PARK:** My most earnest desire is we can get

IN THE UNITED STATES DISTRICT COURT
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United States of America,)
et al.,) **PUBIC**
)
Plaintiffs,)
) CV No. 20-3010
vs.) Washington, D.C.
) September 15, 2023
Google LLC,) 9:30 p.m.
)
Defendant.)
_____)

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For DoJ Plaintiffs:

Kenneth M. Dintzer

U.S. DEPARTMENT OF JUSTICE

1100 L Street, NW

Washington, D.C.

(202) 307-0340

Email: Kenneth.dintzer2@usdoj.gov

Erin Murdock-Park

U.S. DEPARTMENT OF JUSTICE

Antitrust Division

450 Fifth Street NW

Washington, DC 20530

(202) 445-8082

Email: Erin.murdock-park@usdoj.gov

For Plaintiff

State of Colorado:

William F. Cavanaugh, Jr.

PATTERSON BELKNAP WEBB & TYLER LLP

1122 Avenue of the Americas

Suite 2200

New York, NY 10036

(212) 335-2793

For Defendant Google:

John E. Schmidtlein

WILLIAMS & CONNOLLY LLP

725 12th St., NW

Washington, D.C. 20005

(202) 434-5000

Email: Jschmidtlein@wc.com

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(The following proceedings were held in open session:)

MS. MURDOCK-PARK: May I resume, Your Honor?

THE COURT: You may. Thank you.

DIRECT EXAMINATION (Cont.)

BY MS. MURDOCK-PARK:

Q. Mr. Kolotouros, I would like to change subjects entirely and talk about your written communications when you were working at Google.

A. Okay.

Q. You've worked at Google for about 20 years?

A. That is correct.

Q. And you were placed on a legal hold in December 2019, during the investigation in this case?

A. Yes.

Q. Placed on another legal hold in January 2021, after the lawsuit was filed?

A. That is correct.

Q. But for over a decade before that, you'd worried about being deposed in an antitrust investigation, right?

1 A. I recognize that Android was -- had been exposed to
2 potential regulatory action, so I was sensitive to how we
3 conducted the business and what might happen as a result of
4 that.

5 Q. Okay. So for -- but for -- you had those concerns for over
6 a decade, right?

7 A. Since my -- since I joined Android, that was something I
8 was sensitive to, yes.

9 Q. And because you were concerned about being deposed in an
10 antitrust investigation into Google, you worked to protect
11 Google, right?

12 A. I wouldn't say I was worried about being deposed. I was
13 worried that that might be something that might happen as a
14 result of my being in Android.

15 Q. Okay. But you worked to protect Google, didn't you?

16 A. I would say I worked to administer and work within the
17 Android ecosystem in a way that I thought was appropriate, yes.

18 Q. Okay. So, just to make sure I'm on the same page, you
19 agree that you worked to protect Google or you disagree?

20 A. I agree that I did everything I can to make sure that we
21 were doing things in the best possible way for Google and for
22 Android, yes.

23 Q. So -- and I just want to make sure, because I don't think
24 you're quite answering my question, Mr. Kolotouros.

25 Are you saying you did not work to protect Google?

1 A. I think it's safe to say I was working to protect Google
2 and preserve what the Android ecosystem was meant to deliver to
3 the ecosystem and to Google.

4 Q. Okay. You wanted to protect Google because you're a loyal
5 employee, correct?

6 A. I think it goes beyond loyalty to wanting to protect the
7 company. It's also how we administered the ecosystem to make
8 sure it was healthy and strong.

9 Q. Do you consider yourself to be a loyal Google employee?

10 A. After 20 years of employment, I believe I'm a loyal
11 employee, yes.

12 Q. So as a loyal employee, to protect Google you took steps to
13 prevent your written communications from being produced in
14 discovery, right?

15 A. I don't know if I would frame it that way.

16 Q. Well, you took steps to copy attorneys on all emails that
17 discussed the MADA, right?

18 A. Whenever I was discussing anything over email that
19 discusses contracts or commercial terms -- well, mainly
20 contracts or what we focus on, memorialize within my particular
21 part of the business, I would copy an attorney to ensure that
22 my interpretation or characterization of what was discussed in
23 the email was accurate; and if not, invited the attorney to
24 weigh in, if possible, yes.

25 Q. Okay. So, you also then copied attorneys on all emails

1 your Google Chat history to history on, right?

2 A. I do not, that is correct.

3 Q. But you were aware that you were on litigation hold?

4 A. I was.

5 Q. You were actually on more than one litigation hold, right?

6 A. Yes.

7 Q. Before Google changed its corporate policy in February
8 2023, what steps did you take to preserve your history of
9 chats?

10 A. I generally tried to avoid conversations over Chat with
11 history off that dealt with substantive business matters,
12 period.

13 Q. But, you generally tried to avoid conversations. That, we
14 just established. That doesn't mean you didn't have
15 conversations, right?

16 A. I don't recall specific conversations with history being
17 off where I was having substantive business conversations on
18 topics.

19 Q. Okay. But you don't know if you actually had any
20 conversations, right?

21 A. I can't recall.

22 Q. If you had a history-off conversation on Chat, would you
23 have attempted to preserve it?

24 A. If it was substantive, I think I would have tried to
25 preserve it. But, at the same time, I don't recall having

1 substantive business conversations.

2 Q. How would you have tried to preserve a substantive business
3 conversation on Chat?

4 A. It would have been to turn history on.

5 Q. And you never turned history on, correct?

6 A. I do not recall having turned history on.

7 Q. Now, you use Google Chat frequently, right?

8 A. I do.

9 Q. And several times a day?

10 A. Yes.

11 Q. You use Google Chat with your coworkers?

12 A. I do.

13 Q. And have any of your coworkers ever asked you to have a
14 history-off Chat?

15 A. I can't recall. I don't generally remember all my chats.
16 But I can't recall any offhand.

17 Q. Okay. You know that some of your coworkers intentionally
18 take chats about MADA or RSA to history off, right?

19 A. I'm not aware of that.

20 Q. Okay.

21 MS. MURDOCK-PARK: We can go ahead and take down
22 UPX1088.

23 And I want to move to admit, if --

24 THE COURT: 1088 is admitted.

25 MS. MURDOCK-PARK: Thank you.

1 BY MS. MURDOCK-PARK:

2 Q. Mr. Kolotouros, you also use Google Chat with your
3 supervisors, correct?

4 A. Yes.

5 Q. Okay. And including your former supervisor, Jamie
6 Rosenberg?

7 A. Yes.

8 Q. And you have used Chat with Mr. Rosenberg to discuss
9 Samsung revenue share, right?

10 A. I can't recall precise instances where I have, but I
11 imagine so, yes.

12 Q. Mr. Rosenberg also kept his Chat default set to history
13 off, right?

14 A. I do not know what Mr. Rosenberg set his Chat history to.

15 Q. Do you recall him ever asking to turn Chat history on?

16 A. I don't recall him ever asking to turn Chat history on.

17 Q. You use Google Chat to discuss business with individuals
18 outside of Google, right?

19 A. No. That is something I try to avoid generally.

20 Q. Okay. So have you ever used Google Chat with an OEM?

21 A. I think maybe I can count on one hand the number of times I
22 received a Chat from an OEM partner.

23 Q. Have you ever used Google Chat with anyone at Samsung?

24 A. Yes. On personal -- on my personal Chat I have, yes.

25 Q. But on Google Chat specifically.